

Preservation of Foreign Legal Materials*

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Mr. Buckwalter briefly describes projects aimed at preserving foreign legal materials now being conducted by organizations both in and outside the United States and by individual libraries.

¶1 In deciding what to say about the preservation of foreign legal materials, there are two options: either be very short or very, very long. The short version goes like this: “Virtually nothing is being done to preserve the vast body of printed legal literature outside the United States, and even less is being done to preserve legal literature that is created in a digital environment.” The very, very long version would list and catalog those partial efforts that are being made in various places to deal with this problem. As a compromise, this article will give the fifteen-minute version, which will perhaps serve as a springboard for discussion and result in one or more bullets in a strategic plan.

¶2 I intend first to cover work that is underway under the auspices of international or national organizations, then to discuss the work of collaborative projects based in the United States, and finally to mention briefly projects undertaken by individual libraries. The focus will be on traditional efforts to preserve printed materials, primarily from the *brittle book* era, by reformatting them to microfilm or microfiche.

International Efforts

¶3 A Google search of **preservation legal literature** turns up among the first hundred hits none that mention directly any project to preserve foreign legal materials, with one exception: Law Library Microform Consortium (LLMC). This is discouraging (except to Jerry Dupont, LLMC’s executive director). It confirms what our experience tells us, that nowhere is there a concerted effort to preserve the legal heritage of any nation other than our own. Digging a bit deeper, however, it turns out that the situation may not be so grim. What turns up under **preservation library worldwide** are Web sites for two organizations that may, in fact, be doing something to address our problem: the International Federation of Library

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Associations and Institutions (IFLA) and the European Commission for Preservation and Access.

¶4 The IFLA Core Activity on Conservation and Preservation (PAC)¹ was established in 1986 (then called Core Programme) with four goals: to raise awareness of preservation issues; to encourage scientific research on the causes, prevention, and treatment of the deterioration of library documents; to educate library staff at all levels on preservation practices; and to develop a policy of coordinated activities with PAC centres, IFLA structures, and other organizations or individuals interested in the preservation of documentary heritage.² PAC operates through an International Focal Point at the Bibliotheque Nationale in Paris and six regional centers at the Bibliotheque Nationale, the Library of Congress, and the national libraries of Venezuela, Russia, Japan, and Australia. Each of these centers is responsible for furthering the goals of PAC in its region, and an examination of the Web sites of the regional centers indicates a variety of programs underway around the world to encourage the preservation of or actually to preserve some or all of the published output of various nations. Depending upon the scope of the project and its definition, the literature of the law may well be included in these projects and no doubt is in many of them. But more needs to be known about what is being done.

¶5 In a similar vein, the European Commission on Preservation and Access was formally constituted in 1994 “to foster, develop and support in Europe collaboration among libraries, archives and allied organisations, in order to ensure the preservation of the published and documentary record in all formats and to provide enhanced access to the cultural and intellectual heritage.”³ Many of the activities of the commission are similar to IFLA’s PAC, and one feature of the organization’s Web site that is very useful for our purposes is a so-called Preservation Map of Europe,⁴ which records many preservation initiatives that are underway in national, university, and public libraries throughout the continent. Here again, although law is not specifically mentioned in any of the projects that I looked at, it is very possible and even likely that legal materials are being preserved in one or another of them. As with PAC, we need to know more about what is being done.

¶6 I was sorry to discover that the International Association of Law Libraries (IALL) does not come up in any of the Google searches that I performed. A search

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1. See generally IFLA Core Activity on Preservation and Conservation, at <http://www.ifla.org/VI/4/pac.htm> (latest revision June 25, 2004).
 2. NAT’L LIBRARY OF AUSTL., IFLA PRESERVATION AND CONSERVATION CORE PROGRAMME, at <http://www.nla.gov.au/initiatives/internat/iflapac.html> (last visited July 21, 2004) (Aims of the PAC Core Programme).
 3. European Comm’n on Preservation and Access, Mission Statement (April 1995), available at <http://www.knaw.nl/ecpa/aims.html>.
 4. European Comm’n on Preservation and Access, Preservation Map of Europe, available at <http://www.knaw.nl/ecpa/map/index.html> (last visited July 21, 2004).

of IALL's own Web site⁵ produces no hits when the term **preservation** is entered in the search box.

¶7 To summarize the international scene: while no coordinated projects to preserve foreign legal materials can easily be found, it may well be that legal materials are being preserved under the umbrella of larger national projects, but we need to know more about that.

Efforts in the United States

¶8 Turning to the work that is being done by organizations based in the United States, we should look first at the work of the LLMC⁶ to preserve legal literature, not only that of the United States but also of the United Kingdom and of other common law jurisdictions. Selected primary materials from the United Kingdom, Canada, Australia, New Zealand, India, and other common law jurisdictions were filmed to preservation standards soon after LLMC was founded in 1976, as well as selected periodicals and treatises and the Yale Blackstone collection. Basic collections of canon law and civil law from the major jurisdictions of Western Europe have been filmed as well. Most important for our purpose, however, is LLMC's Common Law Abroad project, which has undertaken to film the bulk of the primary and secondary legal literature of the former British Empire and the British Commonwealth, perhaps as many as 30,000 volumes.⁷ The project is well underway, and LLMC's recent decision to move to electronic access its entire catalog of materials means that this body of literature will not only be preserved, but will also be widely accessible, either through the purchase of microforms or access to the Web. Eventual completeness of coverage is ensured by enlisting the assistance not only of the original twelve libraries that are contributing their holdings to the project, but by ongoing efforts to fill the gaps by other libraries as well. The involvement of the library at the Institute for Advanced Legal Studies in London and the law libraries at Oxford and Cambridge universities as well as the major legal collections in the United States and Canada makes this in fact a coordinated international effort.

¶9 Another coordinated effort based in the United States is the Foreign Official Gazettes Project of the Center for Research Libraries (CRL).⁸ The Task Force on Foreign Official Gazettes was established in 1995 in response to the New York

5. Int'l Ass'n of Law Libraries, at <http://www.iall.org> (updated June 25, 2004).

6. See generally Law Library Microform Consortium, at <http://www.llmc.com> (last visited July 21, 2004).

7. See THE COMMON LAW ABROAD, at <http://www.commonlawabroad.com> (last visited July 21, 2004) (describing the preservation-filming project); JERRY DUPONT, THE COMMON LAW ABROAD (2001) (bibliography of sources targeted for inclusion in project).

8. See Ctr. for Research Libraries, Foreign Official Gazettes, at http://www.crl.edu/content.asp?11=5&12=22&13=39&top=18#Foreign_official_gazettes (last visited July 21, 2004) (describing CRL's holdings of foreign national gazettes).

Public Library's decision to deaccession its holdings of foreign official gazettes and deposit them at CRL in Chicago. I have been serving as chair since 1995. The task force is charged with the responsibility of overseeing that transfer, which is now complete, as well as the transfer of materials from other libraries, with the goal of building a collection "of record" at CRL, preserving that collection by filming, and making it available to members by electronic or other means. As of this date, the NYPL deposit has been completed and recorded, gaps have been identified, and efforts are underway to locate collections willing to fill those gaps. The next step is to develop a strategy for filming or scanning materials that have not yet been filmed and to identify funding sources for that project. The focus of the project has been on retrospective collections; the task force has been unwilling to become involved in considerations of access to currently published gazettes.

¶10 In summary, then, it would appear that at least two organizations based in the United States, LLMC and CRL, have taken steps to preserve discrete portions of foreign legal literature.

Projects of Individual Libraries

¶11 The final category of projects to preserve foreign legal materials is those undertaken by individual libraries. Here I wish to concentrate on work that has been done at NYPL, the Library of Congress, and at Harvard. For many years, NYPL and the Library of Congress took on the responsibility of preservation microfilming of foreign official gazettes. Thousands of reels of film have been produced under this project, and the entire runs of gazettes of many countries have been filmed. Many countries' gazettes, however, have been filmed with gaps, when it proved impossible to obtain originals, even from the government printers. NYPL's decision to discontinue the collecting of all but a few gazettes resulted in the unilateral cessation of its filming project and the genesis of the CRL project mentioned earlier. LC, however, has continued its filming activities in the countries for which it is responsible, and has also taken on responsibility for some of the countries that NYPL was formerly filming. (It should be mentioned here that a few countries in Western Europe, as well as Japan, have taken the responsibility of filming their own gazettes.) Thus, it is the case that a certain portion of the world's gazettes has been preserved by NYPL and LC or is assured of preservation in the future by LC.

¶12 Finally, let me say a word about several preservation projects that have been undertaken by the Harvard Law School Library. Many of you are familiar with the Nineteenth and Twentieth Century Legal Treatises projects that were undertaken in collaboration with Research Publications, Inc., now Primary Source Media, Inc. Both of these projects used Harvard's holdings, augmented by the holdings of Yale, Columbia, and the Osgood Hall Law School Library, as the basis for microfiche collections of secondary monographic legal literature from the United States and the United Kingdom. Filming was done to preservation stan-

dards, and copies are available for purchase. Both of these projects will soon be available in digital format from Gale, under the name *The Making of Modern Law*. In addition, the Harvard Law School Library received funding through an NEH grant to the Harvard University Library to film its collection of Pre-Soviet Russian Law, including both monographic and serial publications. Another project that Harvard Law completed in 2003 was the transfer of its foreign law holdings published between 1861 and 1980 to a remote storage facility, the Harvard Depository Library. While undertaken primarily to gain space on campus, the project also served to transfer materials from dismal storage areas to a state-of-the-art, climate-controlled storage facility, which alone will serve to extend the useful life of the books themselves by many years. All of the titles are under full bibliographic control, and the books are retrievable on twenty-four-hour notice. A pilot project has begun at the depository to test the viability of a scanning and electronic document delivery system, using Ariel, for materials held there. It is not impossible to imagine at some future date that delivery of materials by this means would be available to researchers outside Harvard, thus enhancing access as well as preservation. Similar projects may be underway in other libraries; I mention these because they are familiar to me and are examples of the work being done by individual libraries, though not coordinated with any national effort.

¶13 I should mention in this context another commercial project, though not the work of any individual library. Primary Source Media's microfilming project, *The Eighteenth Century*, has filmed the entire contents of the *Eighteenth Century Short Title Catalogue*,⁹ covering all books published in Great Britain and its colonies from 1701 through 1800. Much law is included, and it is possible for a library to subscribe separately to the law segments, as we have done. The collection is now also available on the Web as *Eighteenth Century Collections Online*. *Early English Books Online*, a similar project by Chadwick-Healey (now part of ProQuest, formerly UMI), makes available through the Web all books included in Pollard and Redgrave¹⁰ and in Wing,¹¹ which between them cover the years 1475–1700. These projects, in fact, may bring us back full circle to those preservation projects mentioned earlier that include law within the purview of a much broader preservation effort.

Conclusion

¶14 Where, then, do we stand with regard to the preservation of foreign legal materials? It seems that efforts are well underway to preserve the legal heritage of Great

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9. BRITISH LIBRARY, *THE EIGHTEENTH CENTURY SHORT TITLE CATALOGUE* (microfiche ed. 1990).
 10. A. W. POLLARD & G. R. REDGRAVE, *A SHORT-TITLE CATALOGUE OF BOOKS PRINTED IN ENGLAND, SCOTLAND, AND IRELAND, AND OF ENGLISH BOOKS PRINTED ABROAD, 1476–1640* (1926).
 11. DONALD GODDARD WING, *SHORT-TITLE CATALOGUE OF BOOKS IN ENGLAND, SCOTLAND, IRELAND, WALES, AND BRITISH AMERICA, AND OF ENGLISH BOOKS PRINTED IN OTHER COUNTRIES, 1641–1700* (1945).

Britain and the British Empire and Commonwealth. Efforts have been made to preserve the world's official gazettes, though much remains to be done. Aside from this, it is not clear what work is underway. At a minimum, we should have a better sense of who is doing what. It might be worthwhile to establish partnerships with some of the organizations that are coordinating efforts on a national or international level. Which organizations should those be? Individual libraries with extensive holdings should perhaps be encouraged to work together and be given financial incentives to do so. One assumption that we have made at Harvard to govern our preservation activities is that the "developed" countries will take care of their own legal materials, and if we are going to spend our resources on preservation of materials from foreign jurisdictions, we should concentrate in the future on the "developing" world. Is this a valid assumption? Would it be a desirable strategy for others to adopt? How would such efforts be coordinated? Finally, none of this begins to address the issues involved in the preservation of foreign legal materials that are "born digital."